

FCC MAIL SECTION

## Federal Communications Commission

DA 99-1803

SEP 7 3 24 PM '99

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
)  
Amendment of Section 73.202(b), ) MM Docket No. 99-276  
Table of Allotments, ) RM-9702  
FM Broadcast Stations. )  
(Scappoose and Tillamook, Oregon) )

**NOTICE OF PROPOSED RULE MAKING****Adopted: August 25, 1999****Released: September 3, 1999**

Comment Date: October 25, 1999

Reply Comment Date: November 9, 1999

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Thunderegg Wireless, L.L.C. ("petitioner"), licensee of Station KJUN, requesting the reallocation of Channel 281C3 from Tillamook to Scappoose, Oregon, as the community's first local aural service, and the modification of Station KJUN's license to specify Scappoose as its community of license. Petitioner states that it will apply for the channel, if reallocated to Scappoose.

2. Petitioner filed its rule making pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties the opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). The allotment of Channel 281C3 at Scappoose is mutually exclusive with its allotment at Tillamook since the two communities are located 82.5 kilometers (51.2 miles) apart while the Commission's Rules require a separation of 153 kilometers (95 miles) apart. Tillamook, with a population of 4,001 persons, will retain local aural service from KTIL-FM and KMBD(AM).<sup>1</sup>

3. Petitioner states that Scappoose, an incorporated community with a 1990 U.S. Census population of 3,529 persons, has its own zip code, post office, library and telephone directory.<sup>2</sup>

<sup>1</sup> There are also applications pending for noncommercial educational stations on Channels 208A by Oregon Public Broadcasting (BPED-990503MA) and 216A by Tillicum Foundation (BPED-980706MA).

<sup>2</sup> Petitioner states that a more accurate population count for Scappoose is 4,650 persons, which has been confirmed by a 1997 Portland State University population study.

According to the petitioner, Scappoose, which is governed by a Mayor and city council, has its own police and fire departments, school system consisting of two elementary schools, a middle school and a high school, a water system and a small airport. In addition, Scappoose has a number of churches, banks, and doctors, several senior citizen centers, as well as local employment from a large bus manufacturer, a pickle factory, an industrial area, retail establishments and other manufacturing businesses. Furthermore, petitioner states that two weekly newspapers, The St. Helens Chronicle and The South County Spotlight, as well as a local cable channel cover the newsworthy Scappoose events.

4. Petitioner submits that the reallocation of Channel 281C3 from Tillamook to Scappoose would serve the public interest since it would provide the community with its first local aural service and also enable Station KJUN to increase the population it serves by 704,242 persons within a 4,803 square kilometer (1,854 square mile) area. While there will be a loss of service experienced by 21,447 people, petitioner states 14,655 of them will continue to be well served as they will receive five or more services, 4,312 people would receive 4 services, 2,461 people would receive 3 services and 19 people would receive 2 services.<sup>3</sup> Petitioner also points out that Scappoose is not located within any census-designated Urbanized Area. Further, from the proposed transmitter site, Station KJUN's predicted 70 dBu contour will cover only ten percent of the Portland, Oregon-Vancouver, Washington, Urbanized Area. Therefore, a Tuck analysis is not required to show that Scappoose is independent of the Urbanized Area.<sup>4</sup>

5. Channel 281C3 can be allotted to Scappoose in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.5 kilometers (4.1 miles) northwest to accommodate petitioner's desired transmitter site.<sup>5</sup> Canadian concurrence in the allotment is required since Scappoose is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

6. We believe petitioner's proposal warrants consideration since the allotment of Channel 281C3 could provide Scappoose with its first local aural service and enable Station KJUN to serve a larger number of people. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

Channel No.

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<sup>3</sup> Petitioner states that only 19 persons would be considered undeserved if the Commission considers the predicted service from two allotments that can be added to Tillamook, Channels 227A and 240A. While the allotment of these channels may negate the loss area, we will not propose their allotment to Tillamook since the petitioner did not state any intention to apply for them, if allotted. It is Commission policy not to allot a channel absent an expression of interest in applying for the channel.

<sup>4</sup> See, Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995), citing Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

<sup>5</sup> The coordinates for Channel 281C3 at Scappoose is 45-46-58 NL; 122-57-13 WL.

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<u>City</u>	<u>Present</u>	<u>Proposed</u>
Scappoose, Oregon	--	281C3
Tillamook, Oregon	231C3, 281C3	231C3

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before October 25, 1999, and reply comments on or before November 9, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

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Washington, D.C. 20005  
(Counsel to petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.